

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

HOWARD EUGENE BRADEN,	§	
	§	
Petitioner,	§	
VS.	§	CIVIL ACTION NO. 2:12-CV-00351
	§	
DIRECTOR, TDCJ-ID,	§	
	§	
Respondent.	§	

ORDER DENYING CERTIFICATE OF APPEALABILITY

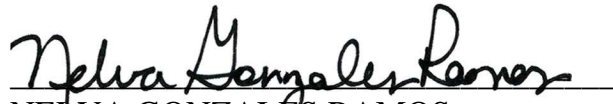
On June 7, 2013, the Court entered its “Order Adopting Memoranda and Recommendations and Denying Pending Motions” (D.E. 19) and subsequent “Final Judgment” (D.E. 20). On June 17, 2013, Petitioner filed his Notice of Appeal (D.E. 21). The Court construes the Notice of Appeal as a request for Certificate of Appealability (COA). *See generally, Scheanette v. Quarterman*, 482 F.3d 815, 819 (5th Cir. 2007).

A COA “may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). “The COA determination under § 2253(c) requires an overview of the claims in the habeas petition and a general assessment of their merits.” *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). Where a district court rejects the constitutional claims on the merits, the petitioner must show that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong. *Slack v. Daniel*, 529 U.S. 473, 484 (2000). “A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court’s resolution of his constitutional claims or that jurists could conclude the issues

presented are adequate to deserve encouragement to proceed further.” *Miller-El*, 537 U.S. at 327.

A slightly different standard applies when the claims are dismissed on procedural grounds. In that instance, a petitioner must show, “at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack*, 120 S.Ct. at 1604 (emphasis added). In petitioner’s case, the Court finds that his claims should be dismissed on procedural grounds and, in the alternative, on the merits. Reasonable jurists would not find these conclusions debatable. Therefore, the Court DENIES Petitioner’s request for a COA because he has not made the necessary showing for issuance of a COA on either type of ground.

ORDERED this 1st day of October, 2013.


NELVA GONZALES RAMOS
UNITED STATES DISTRICT JUDGE